

1 JUAN MENDEZ-BAROCIO,

2 Petitioner,

3 v.

4 WARDEN OF IMMIGRATION
5 DETENTION FACILITY, Warden,

6 Respondent.

7 Case No. [20-cv-06110-YGR](#) (PR)

8

9 **ORDER DISMISSING PETITION FOR
10 WRIT OF HABEAS CORPUS AS
11 MOOT**

12 **I. INTRODUCTION**

13 Petitioner, Juan Mendez-Barocio, a removable alien formerly detained on behalf of the
14 Department of Homeland Security (“DHS”) at Mesa Verde Processing Center in Bakersfield,
15 California, filed a *pro se* petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2241. Dkt.

16 1. Respondent moves to dismiss the petition as moot. Dkt. 28. Petitioner has not filed any
17 response to the motion.

18 For the reasons stated below, the Court GRANTS respondent’s motion to dismiss and
19 DISMISSES the petition as moot.

20 **II. BACKGROUND**

21 Petitioner is a native and citizen of Mexico who adjusted his status to that of a lawful
22 permanent resident on January 12, 1990. *See* Kroman Decl. ¶ 4. On May 9, 2007, petitioner was
23 convicted by a Monterey County jury of attempted murder, two counts of preventing/dissuading
24 witness, six counts of assault with a deadly weapon, and one count of threats of violence. *See id.*
25 ¶ 5. After completion of his 14-year sentence, he was immediately transferred to the custody of
26 the United States Immigration and Customs Enforcement (“ICE”) on May 29, 2018. *See id.* ¶ 6.

27 On the same date as his custodial transfer on May 29, 2018, petitioner was served with a
28 Notice to Appear, placing him in removal proceedings before an Immigration Judge in San
Francisco, California. *See id.* On August 24, 2018, the Immigration Judge held that petitioner
was removable pursuant to 8 U.S.C. § 1227(a)(2)(A)(iii), as an alien convicted of two aggravated

1 felonies. *See id.* ¶ 7. Petitioner timely appealed the Immigration Judge’s decision to the Board of
2 Immigration Appeals (“BIA”), and, on March 7, 2019, the Board dismissed the appeal. *See id.*
3 ¶ 8; Dkt. 14-3.

4 On March 15, 2019, petitioner, proceeding *pro se*, filed a timely petition for review and
5 motion for a stay of removal with the Ninth Circuit Court of Appeals challenging the underlying
6 order of removal. *See* Kroman Decl. ¶ 9. On May 3, 2019, petitioner was served with a “Notice
7 of Alien Custody Review,” and three weeks thereafter, on May 24, 2019, ICE issued a “Decision
8 to Continue Detention,” informing petitioner that he would remain in custody pending resolution
9 of his petition for review with the Ninth Circuit. *See id.* ¶¶ 22-23.

10 Petitioner filed the instant petition on August 31, 2020. Dkt. 1. Petitioner, who was being
11 detained at the time, claimed that he should be released from detention. *See id.* Petitioner argued
12 that he was entitled to a bond hearing, and that his continued detention without a hearing violated
13 the applicable law and his constitutional right to due process and equal protection. *See id.*
14 Meanwhile, Respondent claimed that petitioner remained lawfully detained at that time. Dkt. 14.
15 Respondent argued that under applicable law, petitioner did not have a statutory right to a bond
16 hearing and that they should be allowed to continue detaining him. *See id.*

17 On May 25, 2021, the Ninth Circuit denied in part and dismissed in part petitioner’s
18 petition for review, upholding the BIA’s determination that petitioner’s attempted murder and
19 assault with a deadly weapon convictions were aggravated felonies that rendered him removable
20 from the United States. *See* Dkt. 19. Petitioner filed a motion for panel rehearing and motion for
21 rehearing en banc with the Ninth Circuit that were ultimately denied on October 19, 2021. *See*
22 Dkt. 24.

23 On October 28, 2021, the Ninth Circuit issued its mandate and denied petitioner’s request
24 to reinstate the stay of removal. Dkts. 26-1, 26-2, 26-3.

25 On October 29, 2021, petitioner was removed to Mexico. *See* Dkt. 28-1.

26 III. DISCUSSION

27 Article III, § 2, of the Constitution requires the existence of a case or controversy through
28 all stages of federal judicial proceedings. This means that, throughout the litigation, the petitioner

1 “must have suffered, or be threatened with, an actual injury traceable to the [respondent] and
2 likely to be redressed by a favorable judicial decision.” *Lewis v. Continental Bank Corp.*, 494
3 U.S. 472, 477 (1990). Once a case no longer presents a live Article III case or controversy, it is
4 moot. *Abdala v. INS*, 488 F.3d 1061, 1063 (9th Cir. 2007).

5 A habeas petition is moot where the petitioner has been removed or released and there are
6 no “collateral consequences” that would be redressed by granting a habeas petition where the alien
7 is challenging the underlying conviction or removal order. *See id.* at 1064 (citing examples where
8 removal of alien without addressing the underlying conviction would mean that alien was barred
9 for a number of years from reentering the country).

10 Here, petitioner has been removed to Mexico. *See* Dkt. 28-1. Thus, there is no longer a
11 case or controversy on which this Court can grant relief. *See Abdala*, 488 F.3d at 1063 (citation
12 omitted) (“At any stage of the proceeding a case becomes moot when ‘it no longer present[s] a
13 case or controversy under Article III, § 2 of the Constitution.’”) (quoting *Spencer v. Kemna*, 523
14 U.S. 1, 7 (1998) (brackets in original)). Because this case is moot, there is no subject matter
15 jurisdiction. *See Am. Rivers v. Nat'l Marine Fisheries Serv.*, 126 F.3d 1118, 1123 (9th Cir. 1997)
16 (“A federal court does not have jurisdiction to give opinions upon moot questions or abstract
17 propositions, or to declare principles or rules of law which cannot affect the matter in issue in the
18 case before it.”) (internal quotation omitted). Moreover, petitioner has not established that any
19 collateral consequences would exist or any exception would apply in his case. Therefore,
20 respondent’s motion to dismiss is GRANTED, and the petition is DISMISSED as moot.

21 **IV. CONCLUSION**

22 Accordingly, the Court GRANTS respondent’s motion to dismiss (dkt. 28) and the instant
23 petition is DISMISSED as moot. The Clerk of the Court shall terminate all pending motions and
24 close the file.

25 This Order terminates Docket No. 28.

26 IT IS SO ORDERED.

27 Dated: November 30, 2021


28 HON. YVONNE GONZALEZ ROGERS
United States District Judge